

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

REF:OCCL:DH

ENF: MA-08-30

December 11 ,2009

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Enforcement File No. MA-08-30
Request for Additional Time Regarding Unauthorized Seawall
Improvements Located Makai of Shoreline in the Vicinity of Subject
Parcel (2) 4-4-001:042

BY: Hale Kai AOA Condominiums, 3695 Lower Honoapiilani Road,
Lahaina, Island of Maui - Owner of Subject Parcel (2) 4-4-001:042

AREA OF USE: Approximately 60 Linear Feet

AREA OF PARCEL: 46,328 Square Feet

LOCATION: Lahaina District, Island of Maui

SUBZONE: Resource

BACKGROUND:

The Board of Land and Natural Resources (BLNR) at the May 23, 2008 meeting found the Hale Kai AOA Condominiums to be in violation of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes (HRS), regarding the failure to obtain the appropriate approval for the unauthorized seawall improvements located makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042; subject to the ten terms and conditions (**Exhibit 1**). Condition # 2 states, "that Hale Kai AOA will remove the subject boulders and cement and restore the area back to its original condition as its existed prior to the construction of these improvements within 365 days from the date of the Board of Land and Natural Resource's action, unless otherwise permitted by the BLNR." The deadline for this action would have been May 23, 2009.

Hale Kai's consultants, Munekiyo & Hiraga, Inc. requested a time extension to this deadline. On March 27, 2009 the BLNR extended the deadline 180 days until November 29, 2009 to file a Conservation District Use Application (CDUA). The extra time enabled Munekiyo & Hiraga to conduct the County of Maui, Planning department's requirement for an engineering assessment of the seawall/revetment.

TIME EXTENSION REQUEST:

Munekiyo & Hiraga, Inc. requires additional time for Maui County, Planning Department to review the engineering assessment and to prepare and submit a Special Management Area (SMA) application to the county, and to submit the required CDUA to the DLNR. Munekiyo & Hiraga are therefore requesting a 180-day extension from November 29, 2009 deadline until May 28, 2010 (**Exhibit 2**).

DISCUSSION:

Staff believes that all interests are best served by extending deadline 180 days to May 28, 2010 to allow Hale Kai's consultants to prepare and submit a SMA and CDUA to the respective government agencies for the seawall/revetment. Staff, therefore, recommends as follows:

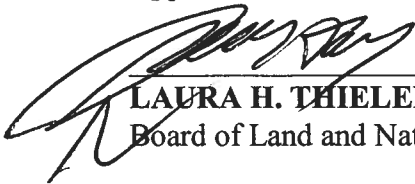
1. That Munekiyo & Hiraga is granted a 180-day extension from November 29, 2009 deadline until May 28, 2010 to submit a Conservation District Use Application to the Department of Land and Natural Resources.

Respectfully submitted,

Dawn T. Hegger

Dawn T. Hegger,
Senior Staff Planner

Approved for submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

ENF: MA-08-30

CERTIFIED/RETURN RECEIPT

7007 0710 0003 9987 8459

John Male
3691 Lower Honoapiilani Road, Apartment 105
Lahaina, Hawaii 96761

David Merchant,
305 High Street # 101,
Wailuku, Hawaii 96793

Dear Mr. Male and Mr. Merchant,

**SUBJECT: Enforcement File No. MA-08-30
Regarding Unauthorized Seawall Improvements Located Makai of Shoreline in
the Vicinity of Subject Parcel (2) 4-4-001:042**

This is to inform you that on Friday May 23, 2008, the Board of Land and Natural Resources (BLNR) found the Hale Kai AOA to be in violation of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes (HRS), regarding the failure to obtain the appropriate approval for the unauthorized seawall improvements located makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042, subject to the following terms and conditions:

1. The Hale Kai AOA violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), two instances by placing boulders and cement material makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042 in the Conservation District to occur. The landowner is fined a total of \$4,000.00 for two Conservation District violations;
2. That Hale Kai AOA will remove the subject boulders and cement and restore the area back to its original condition as it existed prior to the construction of these improvements, within 365 days from the date of the BLNR's action, unless otherwise permitted by the BLNR;
3. That Hale Kai AOA will stake the metes and bounds of their subject parcel as not to infringe upon state-owned beach lands after the removal of the boulders and cement;

EXHIBIT 1

4. That Hale Kai AOA is fined an additional **\$1,000.00** for administrative costs associated with the subject violations (\$500.00 OCCL staff/\$250.00 MDLO staff/\$250 DOCARE staff);
5. That Hale Kai AOA shall pay all fines (**total \$5,000.00**) within thirty (30) days of the date of the Board of Land and Natural Resources' action;
6. That OCCL will transmit a copy of this report to the County of Maui to enable Maui County to investigate all other unauthorized improvements made on the seawall structure;
7. That either the OCCL and/or the MDLO staff will conduct a site visit of the area within 180 days from the date of the removal of the boulders and cement;
8. That no further work shall occur in the area within the Conservation District, without the Board of Land and Natural Resources' approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District without approval; the alleged will be fined an additional \$2,000 a day;
9. That in the event of failure of Hale Kai AOA to comply with any order herein, they shall be fined an additional \$2,000 per day until the order is complied with; and
10. That in the event of failure of Hale Kai AOA to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

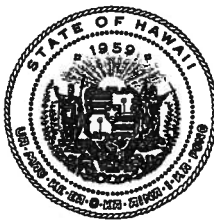
Should you have any questions or comments please contact Dawn Hegger of the Office of Conservation and Coastal Lands at 587-0380.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
Maui District Land Agent
Maui County Planning Department – T. Abbot
DOCARE – Maui Branch

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

7008 1140 0001 0730 7380

CERTIFIED/RETURN RECEIPT

ENF: MA-08-30

APR 14 2009

Mark Alexander Roy
Project Manager
Munekiyo & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

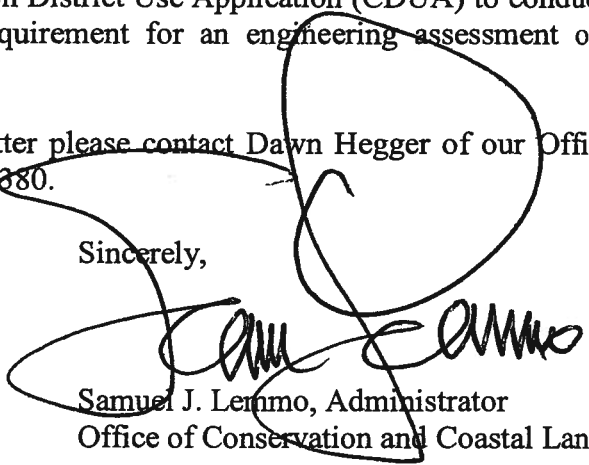
Dear Mr. Roy,

SUBJECT: Enforcement File No. MA-08-30
Regarding Unauthorized Seawall Improvements Located Makai of Shoreline in
the Vicinity of Subject Parcel (2) 4-4-001:042

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is notifying Munekiyo & Hiraga, Inc. that the Board of Land and Natural Resources (BLNR) at its March 27, 2009 land board meeting extended the deadline 180-days until November 29, 2009 to file a Conservation District Use Application (CDUA) to conduct the County of Maui, Planning Department's requirement for an engineering assessment of the seawall/revetment.

If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Maui District Land Agent
Maui County Department of Planning – T. Abbott



RECEIVED
OFFICE OF CONSERVATION
& COASTAL LANDS

MICHAEL T. MUNEKIYO
GWEN OHASHI HIRAGA
MITSURU "MICH" HIRANO
KARLYNN FUKUDA

MARK ALEXANDER ROY

2009 NOV -6 A 8: 07

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

November 4, 2009

Sam Lemmo, Administrator
Attn: Dawn Hegger
State of Hawai'i
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, Hawai'i 96809

SUBJECT: Hale Kai Condominium, Honokowai, Maui
(Enforcement File No. MA-08-30)

Dear Mr. Lemmo:

We are writing to you today, on behalf of our client Hale Kai Association of Apartment Owners (AOAO), regarding the subject enforcement file.

Specifically, the following condition (in addition to others) was approved at the May 23, 2008 meeting of the Board of Land and Natural Resources (BLNR):

Condition No. 2: That Hale Kai AOAO will remove the subject boulders and cement and restore the area back to its original condition as it existed prior to the construction of these improvements within 365 days from the date of the BLNR's action, unless otherwise permitted by the BLNR.

In respect to the repair and maintenance work encapsulated with Condition No. 2, the Office of Conservation and Coastal Lands (OCCL) has indicated that a Conservation District Use Application (CDUA) may be submitted for processing to request that said improvements be allowed to remain in place. OCCL has also confirmed that a Board Permit will need to be processed by the OCCL for these improvements pursuant to Section 13-5-23, Hawai'i Administrative Rules (HAR), L-5, "seawalls and shoreline protection devices, and shoreline structures".

In accordance with this information, Hale Kai has decided to proceed with the preparation and submittal of a CDUA for processing by OCCL. This application will be supported by an Environmental Assessment (EA) that is currently being prepared in accordance with the requirements of Chapter 343, Hawai'i Revised Statutes (HRS). A copy of the early

consultation letter for the EA is enclosed as **Attachment "A"**. The CDUA will be submitted in accordance with the application submittal requirements and will include a copy of the Draft EA. The Draft EA will provide an analysis of the following items of work:

1. AFTER-THE FACT ACTIONS

The repair and maintenance work identified in the subject enforcement file will be addressed in the EA documentation. The EA analysis will include:

(a) 1998 Boulder Repair and Maintenance Work

In its report to the Board of Land and Natural Resources (BLNR) on May 23, 2008, OCCL defined the scope of the boulder work as *'the unauthorized placement of boulders in the makai area in May 1998'*.

As noted in previous correspondence submitted to OCCL prior to the May 2008 BLNR meeting, the 1998 boulder work entailed (1) the widening of a pre-existing erosion channel running behind (mauka of) the existing boulder revetment and in front of a decorative landscaping wall that exists along the south side of the property, and, (2) the placement of various sized rocks/boulders into the trench to stabilize the affected area and prevent further erosion. This work was undertaken by Hale Kai AOA in an effort to address wave-related water damage and building maintenance issues that were occurring within one of the Hale Kai buildings that lies in close proximity to the ocean at this particular location along the shoreline.

The spatial limits of this work were identified in the map and photo documentation that was submitted to OCCL as part of the November 10, 2008 letter from Hale Kai AOA.

(b) 2004 Cement Repair and Maintenance Work

In its staff report to the BLNR, OCCL defined the cement work as the *'placement of cement on some of the rocks in July 2004'*.

The existing revetment that runs along the shoreline of the Hale Kai property consists of a series of large grouted boulders that were installed at the property over 40 years ago, prior to the construction of the Hale Kai condominium. The grouting of these boulders in place occurred prior to early 1980's, as documented in the 1985 Geotechnical Investigation (by Harding Lawson Associates) and the 2007 Coastal Engineering Investigation (by Sea Engineering, Inc.) reports that were completed for the property.

The minor repair and maintenance work identified in the May 2008 OCCL staff report was undertaken by the Hale Kai AOA in 2004 to reapply cement grouting to several boulders that were breaking away from the revetment structure. This regrouting work was completed as part of an overall repair and maintenance project that was intended to address damage to the vertical seawall that lies between the revetment and the swimming pool area of the property.

The spatial limits of this work were described in the map and photo documentation that was submitted to OCCL as part of the November 10, 2008 letter from Hale Kai.

2. FUTURE CORRECTIVE ACTIONS

As requested in page 4 of the OCCL staff report to BLNR, Hale Kai AOA has been working with the County of Maui, Department of Planning over the past 16 months to obtain the necessary after-the-fact approvals for the applicable repair and maintenance actions identified in the subject enforcement file. The Department of Planning issued a SMA Minor Permit (SMA) and a Shoreline Setback Approval (SSA) on October 13, 2008 for the work that has been identified to fall within the County of Maui's jurisdiction. A copy of the SMA/SSA approval letter is enclosed for your files. **See Attachment "B"**. Condition Nos. 1-3 of the SMA/SSA approval has required the owners to undertake a full engineering assessment of the existing seawall and revetment to assess the current condition of the structure and, if applicable, recommend corrective actions to address any identified performance issues.

Toward addressing compliance with this condition, the Hale Kai AOA contracted with Sea Engineering, Inc., a coastal engineering firm, to prepare the required engineering assessment report. The engineering assessment was completed in May 2009 and recommended various corrective actions (landscaping and revetment crest repairs) intended to address some minor maintenance issues that were identified during the course of the assessment. A SMA/SSA application was submitted to the Maui Planning Department in July 2009 requesting approval for the corrective actions that are proposed to be undertaken by the Hale Kai AOA. While this application is still under review, the Maui Planning Department has indicated to the Hale Kai AOA that an SMA Minor Permit and a SSA may be issued for this work. Following approval of the proposed corrective actions, this work will also need to be included in the overall scope of work to be analyzed in the Draft EA document that will support the CDUA application. As such, the CDUA and Draft EA will be submitted to OCCL for processing following approval of the SMA/SSA applications for the corrective actions.

To allow time for completion of the engineering assessment and processing of applicable approvals by the Maui Planning Department, the BLNR issued a 180-day time extension for compliance with Condition No. 2 and the submittal of the CDUA to OCCL for processing. The deadline for submittal of the CDUA for the after-the-fact repair and maintenance work is November 29, 2009.

Given the current status of the County's review of the engineering assessment and the SMA/SSA applications for the proposed corrective actions, we are writing to OCCL today to respectfully request consideration of a 180-day extension to the November 29, 2009 deadline stipulated in your April 14, 2009 letter. See **Attachment "C"**. Approval of the time extension would not only ensure a comprehensive evaluation of the potential environmental impacts associated with both the after-the-fact and future corrective actions, but would also allow sufficient time for processing of the SMA/SSA and CDUA applications.

Thank you for your assistance with this matter. Should you have any questions, please do not hesitate to contact me at (808) 244-2015.

Very truly yours,



Mark Alexander Roy, AICP
Project Manager

MR:tn

Attachments

cc: Dawn Hegger, Office of Conservation and Coastal Lands (w/attachment, via fax)
Jim Buika, County of Maui, Department of Planning (w/attachment, via delivery)
Roberta Donnelly, Hale Kai AOA (w/attachment, via email)
John Male, Hale Kai Seawall Committee (w/attachment, via email)
Dave Merchant, Barker Martin LLP (w/attachment, via email)

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MICHAEL T. MUNEKIYO
GWEN OHASHI HIRAGA
MITSURU "MICH" HIRANO
KARLYNN FUKUDA

MARK ALEXANDER ROY

October 2, 2009

Laura H. Thielen, Chairperson
State of Hawai'i
**Department of Land and Natural
Resources**
P. O. Box 621
Honolulu, Hawai'i 96809

**SUBJECT: After-The-Fact Permitting for Improvements to Existing
Seawall/Revetment In Vicinity of Hale Kai Condominium, TMK (2)4-4-
001:042, Honokowai, Maui, Hawaii (OCCL ENF: MA-08-30)**

Dear Ms. Thielen:

At the May 23, 2008 meeting of the Board of Land and Natural Resources (BLNR), the BLNR found the Hale Kai Association of Apartment Owners (AOAO) to be in violation of Title 13-5 Hawaii Administrative Rules (HAR), and Chapter 183C, Hawaii Revised Statutes (HRS), regarding the failure to obtain the necessary approvals for some unauthorized improvements to an existing seawall (constructed in the 1960's) located makai of the shoreline in the vicinity of the Hale Kai Condominium property. The subject property, identified by TMK(2)4-4-001:042, contains the existing Hale Kai condominium complex (constructed in 1964) and is located in Honokowai, Maui, Hawaii. See **Exhibit "A"** and **Exhibit "B"**. The unauthorized work elements that were the subject of the BLNR enforcement action are summarized below:

BOULDER REPAIR AND MAINTENANCE WORK

The boulder work was undertaken in 1998 and entailed (1) the widening of a pre-existing erosion channel running behind (mauka of) the existing boulder revetment and in front of a decorative landscaping wall that exists along the south side of the property, and (2) the placement of various sized rocks/boulders into the trench to stabilize the affected area and prevent further erosion. This work was undertaken by Hale Kai AOAO in an effort to address wave-related water damage and building maintenance issues that were occurring within one of the condominium buildings that lies in close proximity to the ocean at this particular location along the shoreline. A map and photos showing the location and spatial limits of the 1998 boulder repair and maintenance work are attached. Refer to **Exhibit "B"** and see **Exhibit "C"**.

CEMENT GROUTING REPAIR AND MAINTENANCE WORK

The existing revetment that runs along the shoreline of the Hale Kai property consists of a series of large grouted boulders that were installed at the property over 40 years ago prior to the construction of the Hale Kai condominium. The grouting of these boulders in place occurred prior to the early 1980's. The minor cement grouting replacement work was undertaken by the Hale Kai AOA in 2004 to reapply cement grouting to several boulders that were breaking away from the revetment structure. This regrouting work was completed as part of an overall repair and maintenance project that was intended to address damage to the vertical seawall that lies between the revetment and the swimming pool area of the property. It is noted that the 2004 cement replacement work affected only a small area of existing boulders located just below the decorative vertical wall that lies between the swimming pool area and the revetment. A map and photos showing the locations and limits of the 2004 cement replacement work are attached. Refer to **Exhibit "B"** and see **Exhibit "D"**.

Condition No. 2 of the May 23, 2009 BLNR decision and order states as follows:

That Hale Kai AOA will remove the subject boulders and cement and restore the area back to its original condition as it existed prior to the construction of these improvements, within 365 days from the date of the BLNR's action, unless otherwise permitted by the BLNR.

The Hale Kai AOA has been in consultation with the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) on this matter and is proceeding with the preparation of a Conservation District Use Application (CDUA) to request after-the-fact approvals from the BLNR for the improvements (identified in Condition No. 2) to remain in place. The removal of these improvements would compromise the structural integrity of the existing shoreline protection structure and would result in unreasonable impacts on the health and safety of occupants living within certain condominium buildings on the property – the closest of which is less than 10 feet inland from the upper extent of the revetment.

At the direction of OCCL, the Hale Kai AOA has also been working with the County of Maui, Department of Planning (Maui Planning Department) to address after-the-fact approval requirements for other seawall repair and maintenance work that occurred between 2004 and 2007 within the limits of the subject property. On October 13, 2008, the Maui Planning Department issued an after-the-fact Special Management Area (SMA) Minor Permit and a Shoreline Setback Approval (SSA) for these other repair and maintenance actions. As a condition of this approval, the Hale Kai AOA was required to prepare an

Laura H. Thielen, Chairperson
October 2, 2009
Page 3

engineering assessment of the existing seawall/revetment along the property to assess the current condition of the structure. The engineering assessment was completed in May 2009 and recommended various corrective actions (landscaping and revetment crest repairs) intended to address some minor maintenance issues that were identified during the course of the assessment. A SMA/SSA application was submitted to the Maui Planning Department in July 2009 requesting approval for the corrective actions that are proposed to be undertaken by the Hale Kai AOA. While this application is still under review, the Maui Planning Department has recently indicated to the Hale Kai AOA that an SMA Minor Permit and a SSA can be issued for this work.

To allow time for completion of the engineering assessment and processing of applicable approvals by the Maui Planning Department, the BLNR issued a 180-day time extension for compliance with Condition No. 2 and the submittal of the CDUA to OCCL for processing. The deadline for submittal of the CDUA for the after-the-fact repair and maintenance work is November 29, 2009.

As the 1998 and 2004 after-the-fact improvements involved the use Conservation District lands which have been determined to fall outside of the limits of the subject property, compliance with the requirements of Hawaii Revised Statutes, Chapter 343 will be necessary for the CDUA application process to proceed. An Environmental Assessment (EA) will, therefore, be prepared to evaluate the technical parameters of the proposed project and to advance findings relative to the significance of the project-related actions. The Approving Agency for the EA will be the OCCL.

On behalf of the Hale Kai AOA, we are requesting early consultation comments for the after-the-fact permitting request. These comments will be used in the preparation of a Draft EA for the project. Once completed, the Draft EA will be submitted to OCCL as part of the CDUA and will act as the primary technical analysis document for the request at hand. With this in mind, we would appreciate receiving any written comments you may have regarding the proposed actions by October 23, 2009. Please address your comments to the following:

Mark Alexander Roy, AICP, Project Manager
Munekiyo & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

Laura H. Thielen, Chairperson
October 2, 2009
Page 4

Should you have any questions or require additional information, please do not hesitate to contact me at (808) 244-2015.

Very truly yours,



Mark Alexander Roy, AICP
Project Manager

MAR:tn
Attachment

cc: Dawn Hegger, DLNR, Office of Conservation and Coastal Lands
Clayton Yoshida, County of Maui, Department of Planning
Thorne Abbott, County of Maui, Department of Planning
Roberta Donnelly, Hale Kai AOA
Dave Merchant, Merchant Horovitz, LLC

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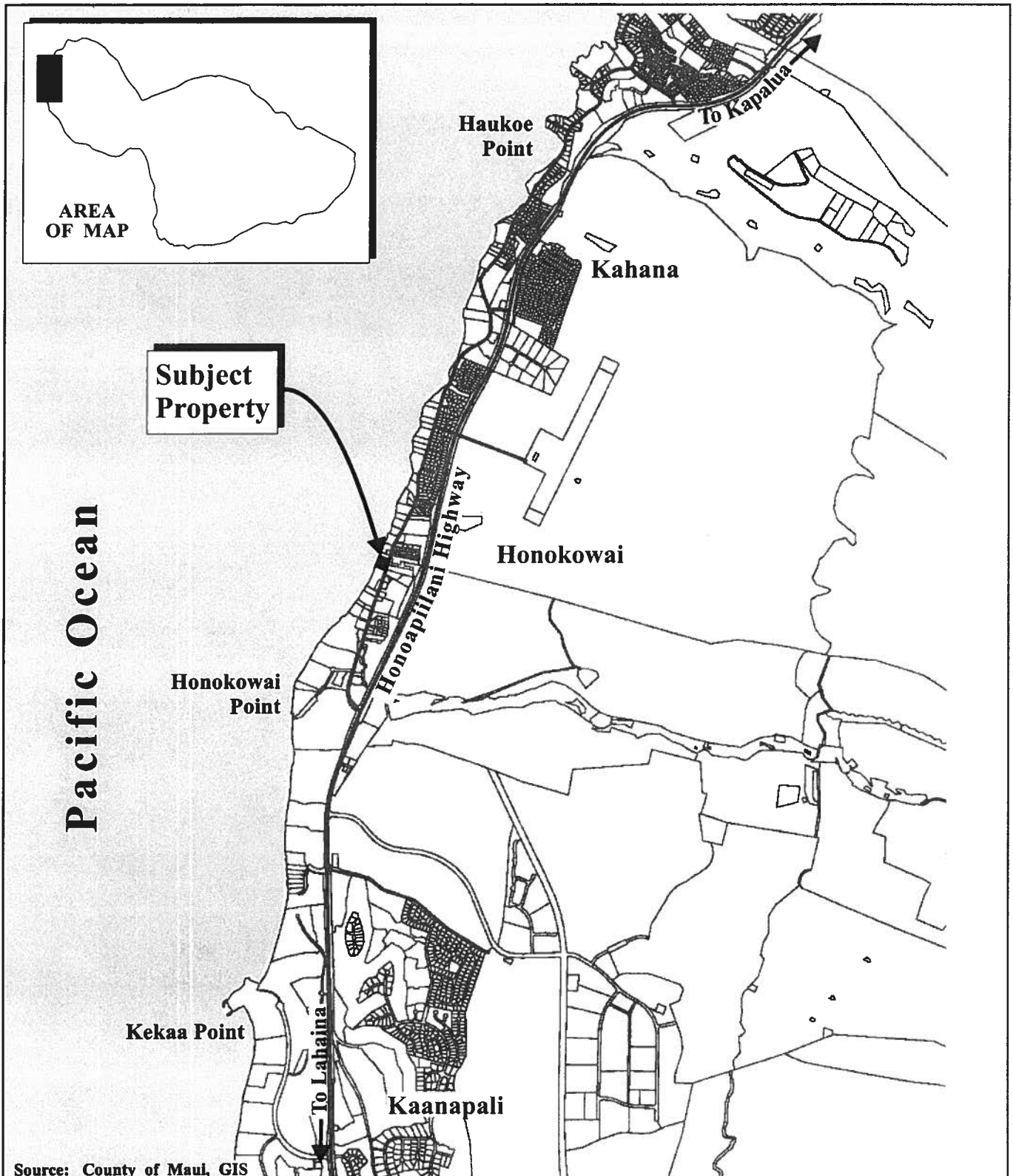


Exhibit "A"

Hale Kai Condominium

NOT TO SCALE

TMK (2)4-4-001:042

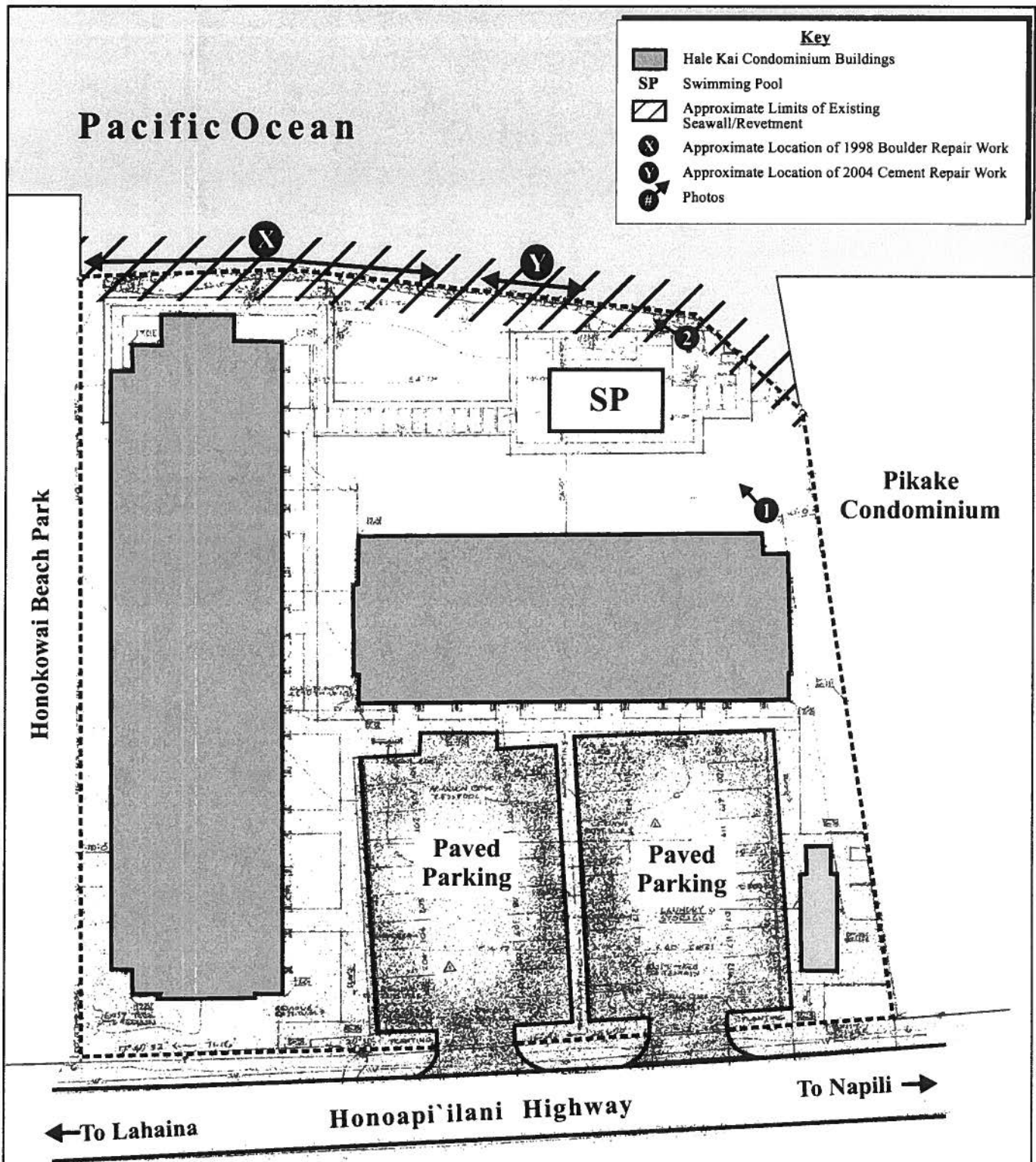
Regional Location Map



Prepared for: Hale Kai AOA

MUNEKIYO & HIRAGA, INC.

HaleKai/Seawall 1401/regionalloca



Source: Lemmon, Freeth, Haines & Jones, Ltd (1965)

Exhibit "B"

Hale Kai Condominium
TMK (2)4-4-001:042
Site Plan and Photo Reference Map

NOT TO SCALE



Prepared for: Hale Kai AOA

MUNEKIYO & HIRAGA, INC.

HaleKai/Seawall 1401/siteplanphotoref



**PHOTO NO. 1 - View to the South from
the North End of the Property**



**PHOTO NO. 2 - Existing Seawall Looking
Towards the South**

Exhibit “B” (Site Photos)

1998 BOULDER REPAIR WORK



PHOTO 1 – Photo showing area of 1998 repair work following completion of trench excavation activities

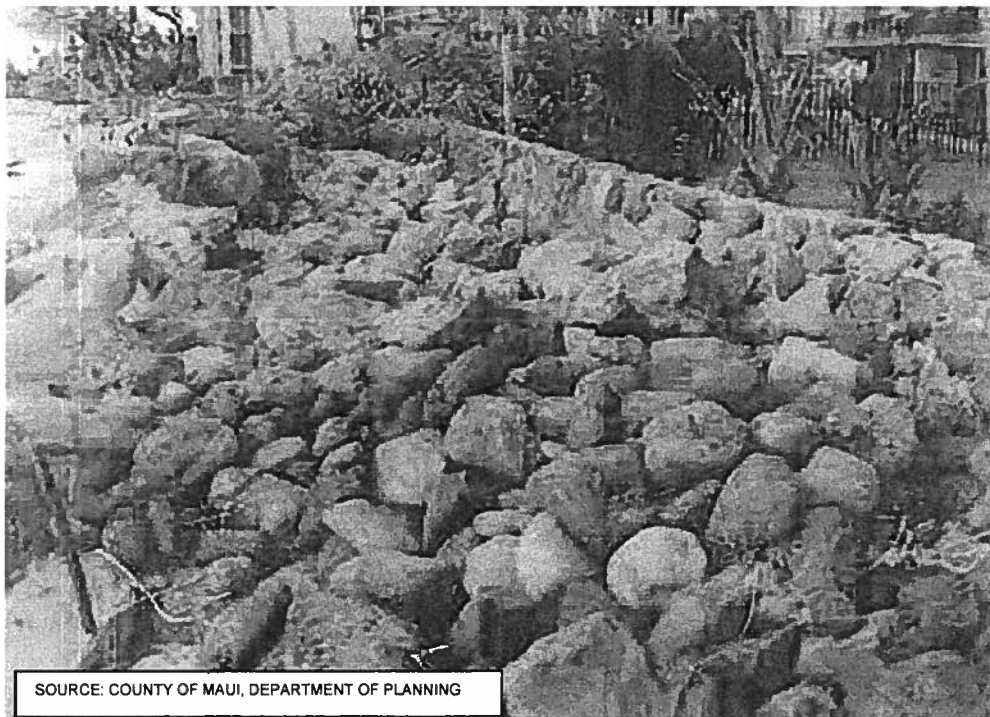


PHOTO 2 – Photo showing area of 1998 repair work following completion of boulder replacement activities

Exhibit "C"

2004 CEMENT REPLACEMENT WORK

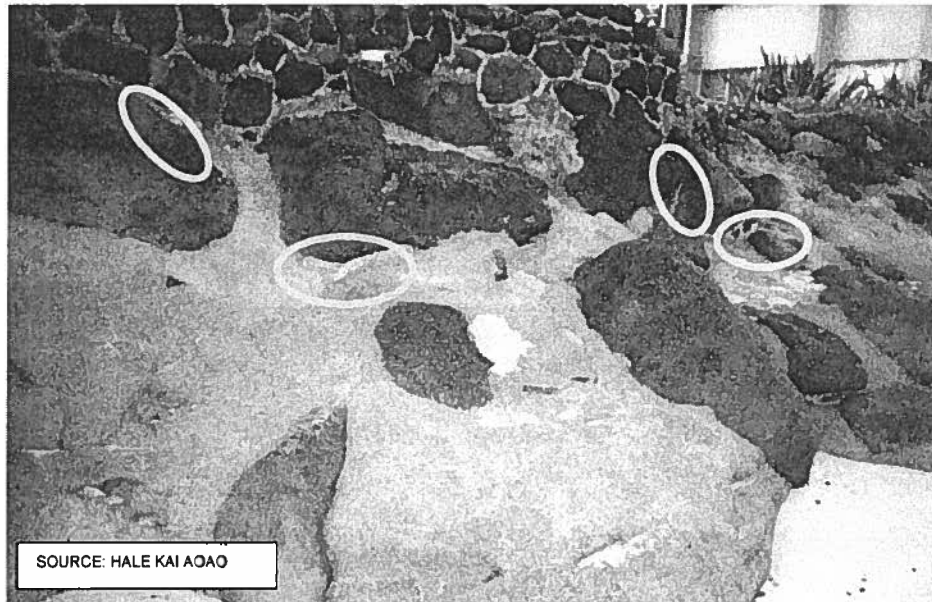


PHOTO 1 – Photo showing present condition of vertical seawall and boulder revetment following completion of repair and maintenance work. The yellow circles identify the approximate limits of the cement replacement completed to the boulder revetment (along the makai side of the vertical wall) in 2004 as part of this work. It is noted that the existing boulders of the revetment were originally cemented in place during the early 1980's.

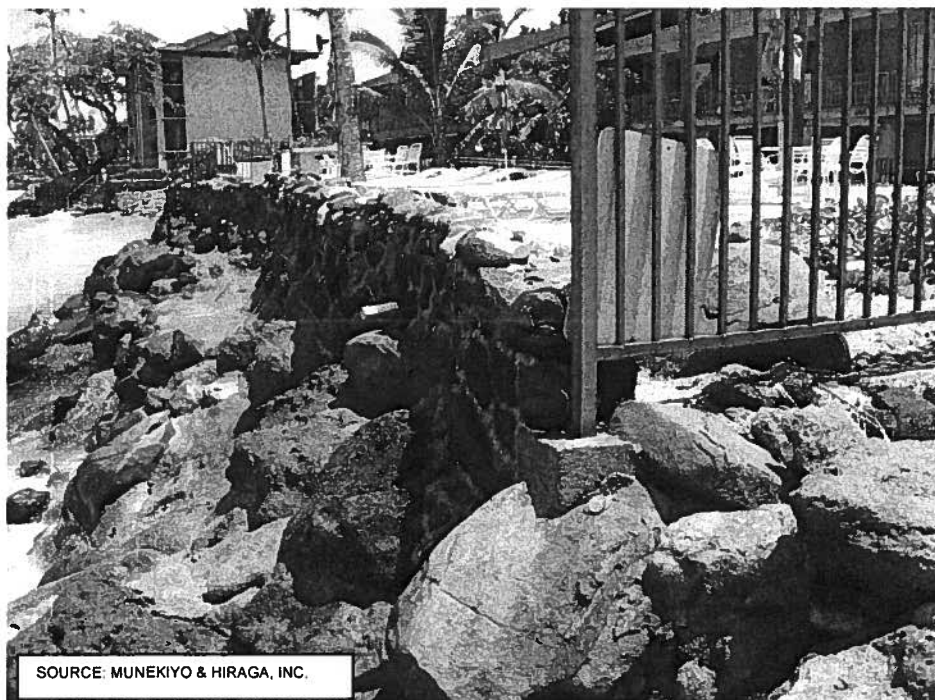


PHOTO 4 – Photo showing present condition of the vertical seawall and existing boulder revetment following completion of 2004-2007 repair and maintenance work.

Exhibit "D"

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



OCT 20 2008

COUNTY OF MAUI
DEPARTMENT OF PLANNING

October 13, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
#7006 2760 0000 7127 4692

Mr. Mark Roy
Munekiyo & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

Dear Mr. Roy:

**SUBJECT: AFTER-THE-FACT SPECIAL MANAGEMENT AND SHORELINE
SETBACK AREA ASSESSMENTS FOR THE HALE KAI AOA,
TMK: (2) 4-4-001:042 AT 3695 LOWER HONOAPI'ILANI ROAD,
HONOKOWAI, MAUI, HAWAII (SMX 2008/0313) (SM2 2008/0061)
(SSA 2008/0033) (EAE 2008/0057)**

During the spring of 2008, complaints regarding unauthorized work at the above-referenced site were brought to the attention of the Department of Planning (Department) and Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL). On June 30, 2008, the Department issued a "First request for correction for a non-permitted structure within the shoreline area." The letter, sent by certified mail, requests that the unauthorized improvements be removed and/or obtain authorization by July 31, 2008. Subsequently, the Department received an After-The-Fact permit application July 2, 2008, for adding a layer of rock and mortar to the existing seawall located at the site. These improvements were unauthorized; however, the applicant previously received approvals from the Department to repair a seawall located at the site. The first approval was granted on December 3, 1984, to repair an 'existing non-conforming seawall'. The second approval was granted on January 13, 1993, to repair an existing legally permitted (permissible) seawall.

On July 23, 2008, the applicant responded to the Department's verbal request to provide additional information, namely photographs of the site, seawall, and unauthorized improvements. On July 29, 2008, the applicant and their representative, Mark Roy, met with Department staff to review additional documentation regarding work at the site, complaints filed by a resident of the AOA, and other relevant information. The most important of these are two engineering reports: a 1985 geotechnical investigation by Harding Lawson and Associates and a 2007 Coastal Engineering Investigation report conducted by Sea Engineering. According to the latter findings, the applicant did not complete the 1993 authorized repairs in a manner that was consistent with what was originally proposed, leading to the failure of the wall to provide adequate protection at the

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

ATTACHMENT "B"

Mr. Mark Roy
October 13, 2008
Page 2

site. The Sea Engineering report offers two courses of action: do nothing or install gravel and geotextile filter construction along with and in conjunction with consultation of a structural engineer for a shoring design if necessary.

During the July 23, 2008 meeting the applicant also provided a May 27, 2008 DLNR-OCCL staff report regarding the unauthorized 2008 improvements. The report recommends specific remedies including the removal of several boulders and cement makai of the shoreline (base of the seawall) and payment of fines totaling \$6,000.00 including administrative costs. On August 5, 2008, the applicant provided a notarized letter indication for the various unauthorized improvements between 2004 and 2007 were valued at \$29,000.00. Also, minutes from the applicants November 12, 2007 AOA Board meeting indicate that the Board voted to conduct repairs that were less costly than those recommended by the Sea Engineering report.

Based on the contents of the above referenced documents, the Department concludes that the unauthorized work occurred on a legal structure which may be repaired up to 50 percent without a variance, pursuant to 12-203-12(a)(5) of the Shoreline Rules for the Maui Planning Commission. However, such a repair may not expand or intensify the use of the structure beyond its prior state of use. In this case, the improvements are alleged to be decorative and, based on the Sea Engineering and DLNR-OCCL reports, not improving the seawall's structural integrity. In fact, the seawall is failing to provide adequate protection to the property, the pool area (wave over-topping) and the nearby vicinity. It is also unclear if rainfall at the site is being properly discharged to a dry well outside of the shoreline setback area, a storm drain, to the ocean (prohibited), or into the ground near the vicinity of the seawall thereby contributing to its failure.

Special Management Area Assessment

Regarding your July 2, 2008 After-The-Fact application, and in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above project that:

- A. The project for repairs to an existing structure that is a minor activity and is not part of a larger development;
- B. The project has a valuation not in excess of \$125,000.00 (Valuation certified as \$29,000.00);
- C. A minimum After-The-Fact (ATF) permit processing fee of \$1000.00 and required application fees of \$110.00 and \$55.00 were paid. An additional ATF fee equating to 10% to 50% of the project's valuation applies. In this case, the SMA assessment application lists the project costs as \$15,000. Therefore, the Department has determined that the ATF fee should equate to 10% of the listed project cost, or \$1,500.00.

Mr. Mark Roy
October 13, 2008
Page 3

- D. The project has no significant adverse environmental or ecological effect, taking into account potential cumulative effects; and
- E. The project is consistent with the objectives, policies, and Special Management Area guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A, and is consistent with the County General Plan and Zoning.

In consideration of the above determinations, you are hereby granted a Special Management Area Minor Permit subject to the following condition:

- 1. That no work shall occur on site without obtaining all necessary government approvals in advance.

Furthermore, in accordance with HRS Chapter 343 the proposed action triggers compliance with environmental review because it is the use of the shoreline area. However, the action qualifies for one or more of the exemption classes, as replacement or reconstruction of existing structures and facilities where the new structure will be located *generally* on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced. Therefore, you are hereby granted an Exemption from Chapter 343.

Lastly, in accordance with the Shoreline Rules for the Maui Planning Commission, Sections 12-203-3, 12-203-6, 12-203-11, and 12-203-12, a determination has been made relative to the above-referenced project that:

- A. Portions of the proposed work are clearly within the shoreline setback area under the County's jurisdiction;
- B. Portions of the project site are located within a flood hazard zone (C and A4, base flood elevation 10 feet);
- C. The shoreline is fixed by a shoreline hardening structure;
- D. The proposed repairs are permissible pursuant to 12-203-12(a)(5) which allow
 "... a legal structure which may be repaired up to 50% without a variance, provided the repair does not expand or intensify the use of the structure beyond its prior state of use. .."

In consideration of the above determinations, you are hereby granted a Shoreline Setback Approval subject to the following conditions:

Mr. Mark Roy
October 13, 2008
Page 4

1. That an application for a Special Management Area Use permit and Shoreline Setback Assessment for a course of corrective action shall be submitted to the Department within 180 days of the date of this letter.
2. That the application will provide, at a *minimum*, a corrective measure which meets or exceeds the most satisfactory solution described by technical studies for the site (i.e. the "Gravel and Geotextile Filter Construction" including recommendations to explore shoring designs described and identified in the Sea Engineering, Inc, Coastal Engineering Investigation, page 5, 2007). Additional studies may be included in the applicants new SMA/Shoreline application which proposes other alternative provided those alternatives exceed the aforementioned "Gravel and Geotextile Filter Construction" recommendation.
3. That any proposed remedy for the seawall obtain validation and comments from a certified engineer licensed in the State of Hawaii. Deference will be given to comments obtained by structural and/or coastal engineers. In addition, the application noted in Condition #1 will include comments obtained from the Sea Grant Extension Agent for Maui County and the State DLNR OCCL.
4. That a preliminary and final compliance report indicating compliance with these conditions will be provided to, reviewed by, and approved by the Department.
5. That full compliance with all other applicable governmental requirements shall be rendered.

Should the applicant and/or landowner(s) fail to comply with the above conditions in the time provided, the Department, at its sole discretion, may issue an immediate Notice of Violation (NOV) without first or second Notices of Warning. The NOV may assess penalties and fines, including daily accruing fines, of up to the maximum permissible by statute and/or rule.

The Director's determination may be appealed pursuant to Section 12-202-26 of the Maui Planning Commission Special Management Area Rules which provides ten (10) business days from the date of receipt of the Director's decision.

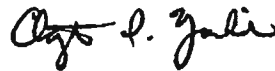
The Department reminds the applicant that the existing seawall was built using technology that is half-a-century old. While some individuals generally say that "they do not build them like the used to", there have been significant advances in the field of structural coastal engineering over the past 50 years that must be considered at your site. Hawaiian-made *boundary walls* laid by hand are designed to collapse inward, thus making them stronger and tighter, which is why many still

Mr. Mark Roy
October 13, 2008
Page 5

exist hundreds of years after their construction. However, your site has a seawall intended to mitigate the impacts of coastal hazards, which it is failing to do. Sea level is projected to rise at least one meter (~3.3 feet) by the end of this century, with observed, measurable changes resulting from increased storm intensity, increased storm surge height, more frequent coastal erosion and acute erosion events, and heavier rainfall amounting to greater quantities of storm water runoff which must be discharged appropriately. Recent data suggests that Hawaii has only just begun to see the influence of sea level rise on coastal hazards. In light of these significant risks, the Department **STRONGLY** encourages the applicant to plan ahead, seek measurable reliable corrections to the existing failing seawall, and to protect life and property at the site through properly designed and built shoreline protection. Failure to do so will result in ***much greater*** expenses in the long term for the applicant and its membership. Investing in modern technological responses for the site, regardless of the cost, is the most likely solution that will shield the condominiums from coastal hazards in the near term.

Thank you for your cooperation. Please contact Staff Planner Thorne Abbott by email to thorne.abbott@mauicounty.gov or by telephone at 270-7520 should you have any questions.

Sincerely,



CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

FOR JEFFREY S. HUNT, AICP
Planning Director

xc: Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Thorne E. Abbott, Coastal Resources Planner
DLNR-OCCL, Sam Lemmo
DLNR-Land Division, Maui
Zoe Norcross-Nu'u, Sea Grant Extension Agent
Applicant (by certified mail #7006 2760 0000 7127 4708)
DSA (2)
General File
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LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

ENF: MA-08-30

CERTIFIED/RETURN RECEIPT

APR 14 2009

Mark Alexander Roy
Project Manager
Munekiyo & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

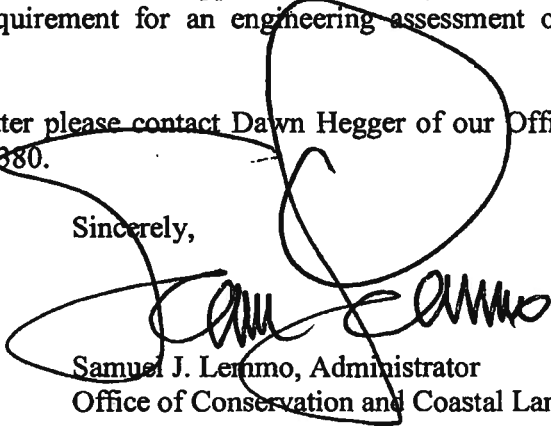
Dear Mr. Roy,

SUBJECT: Enforcement File No. MA-08-30
Regarding Unauthorized Seawall Improvements Located Makai of Shoreline in
the Vicinity of Subject Parcel (2) 4-4-001:042

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is notifying Munekiyo & Hiraga, Inc. that the Board of Land and Natural Resources (BLNR) at its March 27, 2009 land board meeting extended the deadline 180-days until November 29, 2009 to file a Conservation District Use Application (CDUA) to conduct the County of Maui, Planning Department's requirement for an engineering assessment of the seawall/revetment.

If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Maui District Land Agent
Maui County Department of Planning – T. Abbott

ATTACHMENT "C"